THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION NO: 24349 of 2005

Dated: 21-03-2006

Between:

Dr. B.Rama Reddy

..... PETITIONER

AND

The State of Andhra Pradesh,

Rep., by its Chief Secretary,

Hyderabad and three others.

.....RESPONDENTS

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No. 24349 of 2005

O R D E R:

The petitioner, a medical practitioner, filed this writ petition seeking a direction to the respondents 1 and 2 to constitute a Regular Medical Council as contemplated under Section 3 (1) of the Andhra Pradesh

Medical Practitioners Registration Act, 1968 (hereinafter referred to as 'the Act'), by giving effect to G.O.Ms.No.251 Health, Medical and Family Welfare (K1) dated
06-05-1999.

Under Section 3 (1) of the Act, a Council called Andhra Pradesh Medical Council has to be established by the Government by notification. As per Section 3 (2) of the Act, the Council shall consist of two members to be elected by the members of the executive council of the University of Health Sciences in the State from amongst persons holding any degree in modern medicine, seven members to be elected by the registered practitioners from amongst themselves, four members to be nominated by the Government and the Director of Medical Education, the Director of Health and Family Welfare and any other Officer performing the functions of either of the said Directors to be nominated by the Government, ex-officio. As per Section 4 of the Act, the term of office of elected and nominated members is five years from the date of the election or nomination and they shall be eligible for re-election or re-nomination as the case may be. It is not in dispute that such a Council was constituted on
19-12-1991 and its term expired on 19-12-1996. Before the expiry of its term, a notification for the conduct of election of seven members by the registered practitioners from amongst themselves under Section 3 (2) (b) of the Act was issued on 05-08-1996. But, it appears that there was delay in constituting the Council and ultimately the Council could be constituted only in the year 1999 vide G.O.Ms.No.251
06-05-1999 and the same was published in the Gazette on
24-05-1999. In the meanwhile, the first respondent-Government of Andhra Pradesh, vide G.O.Rt.No.1786 dated 28-10-1996, constituted an interim Council as stopgap arrangement consisting of three Directors and six members including the third respondent, who is a registered medical practitioner and was the Chairman of the erstwhile Council. Subsequently, vide G.O.Rt.No.2035 dated 19-12-1996, the third respondent was directed to be continued as Chairman of

Andhra Pradesh Medical Council till a new body is elected. While the things stood thus, the new Council was constituted under G.O.Ms.No.251 dated 06-05-1999 which included seven members elected among the registered practitioners. Admittedly, the petitioner is one of the members who was elected under Section 3 (2) (b) of the Act. However, questioning the nomination of four members under Section 3 (2) (c) of the Act, some of the teaching staff of the medical colleges filed W.P.Nos.10882, 11971 and 12429 of 1999. The contention in the said writ petitions was that none of the members nominated under Section 3 (2) (c) of the Act represent the teaching staff as required. This Court, while directing Rule Nisi on 22-06-1999, directed that the members nominated under Section 3 (2) of the Act shall not be allowed to participate in the meeting of the Medical Council and granted liberty to the respondents to choose two members from the Medical faculties in accordance with Section 3 (2) (c) of the Act. Subsequently, by order, dated 31-12-1999 the operation of G.O.Ms.No.251 dated 06-05-1999 was suspended until further orders. The said order of suspension continued to be in force throughout and in the meanwhile, the term of five years of the Council constituted under G.O.Ms.No.251 dated 06-05-1999 expired.

The grievance of the petitioner in this writ petition is that though the dispute was only with regard to nominated members and that the election of seven members under Section 3 (2) (b) of the Act including the election of the petitioner was never in question, the third respondent, who was directed to act as the Chairman of the interim Council as stopgap arrangement for a period of six months, is being continued illegally. It is alleged that the third respondent who has ceased to be the Chairman of the Medical Council has no right to continue as Chairman beyond 24-05-1999 on which date the election of the new Council was published. Even under Section 5 (1) of the Act, the term of the Chairman is only for a period of two years from the date of his election and as such the third respondent, who was not elected as Chairman, is not entitled to continue any longer. As a matter of fact, in the elections held in the year 1996, the third

respondent was defeated. Hence, the continuation of the third respondent as Chairman of the Medical Council is arbitrary and illegal. Hence this writ petition seeking the above relief.

The second respondent filed a counter-affidavit stating that the interim Council was constituted vide G.O.Rt.No.1786 dated 28-10-1996 since the conduction of elections and declaration of results of the elections takes a minimum time of six months. Subsequently under G.O.Rt.No.2035 dated 19-12-1996, the third respondent was permitted to continue as the Chairman of the Andhra Pradesh Medical Council till a new body is elected. In the meanwhile elections to the new body were held and the results were also announced on 02-05-1997. However there was a delay in publishing the same in Gazette. It was admitted that the petitioner was one of the elected members. However, some of the nominated members filed W.P.Nos.10882, 11971 and 12429 of 1999, wherein this Court, issued interim direction suspending the operation of G.O.Ms.No.251 dated 06-05-1999 pending the writ petitions. Meanwhile the term of the seven elected members, who were elected on 02-05-1997, expired by 01-05-2002. Even if the date of publication of Gazette is taken into consideration, the term of five years was expired by 23-05-2004. Hence this writ petition is misconceived and no relief can be granted.

A separate counter-affidavit has been filed by the fourth respondent denying all the allegations made by the petitioner.

I have heard the learned counsel for both the parties and perused the material on record.

It is true that the petitioner was a validly elected member under Section 3 (2) (b) of the Act and accordingly a Council was constituted vide G.O.Ms.No.251 dated 06-05-1999. However, W.P.Nos.10882, 11971 and 12429 of 1999 were filed questioning nomination of some of the members under Section 3 (2) (c) of the Act and during the pendency of the said writ petitions, operation of G.O.Ms.No.251 dated 06-05-1999 was suspended. The said order of suspension

continued to be in operation for more than six years and ultimately the writ petitions were dismissed on 13-03-2006 as infructuous since the term of the Council has expired. Hence, I am unable to find fault with the action of the respondents in not implementing G.O.Ms.No.251 dated 06-05-1999 under which a new Council was constituted. That apart admittedly as on today the term of the Council had expired long back even if the date of publication of the notification is taken into consideration. In the circumstances, even though the petitioner was a validly elected member under Section 3 (2) (b) of the Act, no Mandamus can be issued at this point of time for constituting a regular Medical Council by giving effect to G.O.Ms.No.251 dated
06-05-1999. Even with regard to the grievance of the petitioner with regard to the continuation of the third respondent as Chairman of the interim Council, a perusal of G.O.Rt.No.1786 dated 28-10-1996 and G.O.Rt.No.2035 dated 19-12-1996 show that the interim Council was directed to be continued till a new body is elected. Since admittedly as on today no new body is elected, continuation of the third respondent cannot be held to be either arbitrary or illegal. However,
I am of the opinion that since the term of the committee constituted under G.O.Ms.No.251 dated 06-05-1999 has already expired long back, there is no justifiable reason on the part of the respondents in not constituting a fresh Council in accordance with law. Now that W.P.Nos.10882, 11971 and 12429 of 1999 were already dismissed by this Court on 13-03-2006, I deem it appropriate to dispose of this writ petition with a direction to the second respondent to take immediate steps for constitution of the council in terms of Section 3 (1) of the Act as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order.

The writ petition is accordingly disposed of. No costs.

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(G. ROHINI, J)

Dated:21-03-2006

ghn/klp